

# **LEGAL PRACTITIONERS ACT 15 OF 1995**

[Government Gazette: 1 September 1995 No. 1141] [Date of Commencement: 1 September 1995]

**as amended by**

Legal Practitioners Amendment 4 of 1997

## **ACT**

**To consolidate and amend the laws relating to the legal profession and legal practitioners; and to provide for matters connected therewith.**

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BE IT ENACTED by the Parliament of the Republic of Namibia as follows:-

### **PRELIMINARY**

## 1 Definitions

In this Act, unless the context otherwise requires-

**"banking institution"** means an institution registered otherwise than provisionally as a bank in terms of the Banks Act, 1965 (Act 23 of 1965);

**"Board"** means the Board for Legal Education established by section 8;

**"board of control"** means the Legal Practitioners' Fidelity Fund Board of Control referred to in section 55;

**"building society"** means an institution finally registered as a building society in terms of the Building Societies Act, 1986 (Act 2 of 1986);

**"candidate legal practitioner"** means a person registered by the Board as undergoing the course of post-graduate study;

**"Centre"** means the Justice Training Centre referred to in section 16;

**"Council"** means the Council of the Law Society referred to in section 45;

**"course of post-graduate study"** means the course for the training of candidate legal practitioners referred to in section 16;

**"Court"** means the High Court of Namibia;

**"Disciplinary Committee"** means the Disciplinary Committee established by section 34;

**"enrolled"** means enrolled as a legal practitioner on the Roll;

**"fidelity fund certificate"** means a certificate issued in terms of section 68;

**"fund"** means the Legal Practitioners' Fidelity Fund referred to in section 53;

**"law centre"** means-

- (a) a centre for clinical legal education in the Faculty of Law at the University of Namibia; or
- (b) a centre controlled by a non-profit making organisation which provides legal services without charge;

**"Law Society"** means the Law Society of Namibia established by section 40;

**"legal practitioner"** means a person who, in terms of this Act, has been admitted and authorised to practise as a legal practitioner or is deemed to have been so admitted and authorised;

**"Legal Practitioners' Qualifying Examination"** means the examination set and held by the Centre under section 16;

**"Minister"** means the Minister of Justice;

**"practise"** means to practise as a legal practitioner, whether for personal gain or in the service of a law centre or the State, and "practice" shall be construed accordingly;

**"prescribed"** means prescribed by rule made under section 52 or by regulation made under section 81;

**"profession"** means the profession of legal practitioner;

**"professional company"** means a company referred to in section 7;

**"Registrar"** means the Registrar of the High Court;

**"Roll"** means the register of legal practitioners referred to in section 2;

**"Rules of Court"** means the rules of the Court made under the High Court Act, 1990 (Act 16 of 1990);

**"trust account"** means an account comprising-

- (a) a trust banking account referred to in section 26 (1); and
- (b) any trust savings or other interest-bearing account referred to in section 26 (2) or (3) opened by a legal practitioner.

## **PART I**

### **ADMISSION AND ENROLMENT**

#### **2 Roll of legal practitioners**

(1) The Registrar shall keep a register of legal practitioners to be known as the Roll.

(2) The Registrar shall enter in the Roll-

- (a) the name of every person admitted and authorised to practise as a legal practitioner in terms of this Act and of every person who in terms of section 6 the Registrar is required to enrol;
- (b) particulars of any order of the Court whereby the name of a legal practitioner has been ordered to be struck off the Roll or whereby a legal practitioner has been suspended from practice;
- (c) particulars of any decision of the Disciplinary Committee under section 35 (8) or of the Court under section 37 with respect to a legal practitioner;
- (d) particulars relating to the death of a legal practitioner or any change in the names or other particulars of a legal practitioner, of whom the Registrar is notified.

(3) The Registrar shall upon application made to him or her, and upon payment of the prescribed fee, issue to a legal practitioner a certificate of enrolment in the form set out in Schedule 4.

#### **3 Admission of legal practitioners**

No person shall be admitted and authorised to practise as a legal practitioner or be enrolled as such, except in accordance with the provisions of this Act.

#### **4 Persons qualified to be admitted as legal practitioners and application for admission**

(1) Subject to the provisions of this Act, the Court shall admit and authorise to practise as a legal practitioner any person who, upon application made by him or her, satisfies the Court that he or she-

- (a) is a fit and proper person to be so admitted and authorised;
- (b) is duly qualified in accordance with the provisions of section 5; and
- (c) (i) is a Namibian citizen; or

- (ii) has been lawfully admitted to Namibia for permanent residence therein and is ordinarily resident in Namibia; or
- (iii) is the holder of an employment permit issued in terms of section 27 of the Immigration Control Act, 1993 (Act 7 of 1993) for the purpose of employment in the service of the State.

(2) An application in terms of subsection (1) shall be made to the Court in accordance with the Rules of Court.

## **5 Academic and professional qualifications**

(1) A person shall be duly qualified for the purposes of section 4 (1) if-

- (a) he or she holds a degree in law from the University of Namibia, or an equivalent qualification in law from a university or a comparable educational institution situated outside Namibia which has been prescribed by the Minister under subsection (4) (a) for the purposes of this paragraph, and he or she has, subject to subsections (2) and (3), been issued with a certificate by the Board stating that he or she-
  - (i) has satisfactorily undergone practical legal training; and
  - (ii) has passed the Legal Practitioners' Qualifying Examination;
- (b) he or she holds a degree, diploma or certificate in law which immediately before the commencement of this Act was prescribed under the Attorneys Act, 1979 (Act 53 of 1979) as a degree, diploma or certificate which entitled a holder thereof to be admitted as an attorney under that Act, and he or she-
  - (i) has, after having obtained such degree, diploma or certificate, either before the date of commencement of this Act or, by virtue of the provisions of section 94 (2), at any time not later than two years after that date, or such longer period as the Minister by notice in the *Gazette* may determine, complied with the provisions of the Attorneys Act, 1979 in regard to service under articles and passed the practical examinations referred to in section 14 (1) (a), (b), (c) and (d) of that Act, or such part or parts thereof from which he or she has not been exempted by virtue of the provisions of section 13 or 13A of that Act; or
  - (ii) was, immediately before the commencement of this Act, exempted by virtue of the provisions of section 13 or 13A of the Attorneys Act, 1979, from service under articles and from passing the practical examinations referred to in subparagraph (i);
- (c) he or she holds a degree or an equivalent qualification in law from a university or a comparable educational institution situated outside Namibia which has been prescribed by the Minister under subsection (4) (b) for the purposes of this paragraph, and he or she-
  - (i) has undergone a course of one year undergraduate study provided by the Faculty of Law of the University of Namibia and has been certified by the University as having passed all examinations and fulfilled all other requirements of such course; and
  - (ii) has, subject to subsections (2) and (3) been issued with a certificate

by the Board stating that he or she-

(aa) has satisfactorily undergone practical legal training; and

(bb) has passed the Legal Practitioners' Qualifying Examination; or

- (d) his or her name appears on the list, register or roll of legal practitioners, advocates or attorneys, or by whatever name called, kept by a competent authority of any country specified in Schedule 3 to this Act, and he or she-
- (i) has, upon his or her application, been exempted by the Board from complying with the requirements of subparagraphs (i) and (ii) of paragraph (a), and, where applicable, has complied with any conditions subject to which such exemption has been granted by the Board; or
  - (ii) where he or she has not been so exempted, has complied with the provisions of subparagraphs (i) and (ii) of paragraph (a).

(2) The Board shall not for the purposes of paragraph (a) (ii) or (c) (ii) (aa) of subsection (1) or section 6 (3) certify that a person has satisfactorily undergone practical legal training, unless the Board, after the consideration of a report by the Director of the Centre-

(a) is satisfied that such person has-

- (i) for the full period that he or she attended the course of postgraduate study; or
- (ii) if such person has already passed the Legal Practitioners' Qualifying Examination, for a period of not less than 6 months,

continuously been attached to a legal practitioner or legal practitioners for the purpose of practical legal training; and

(b) considers the standard of training received by such person as adequate for the purposes of admission as a legal practitioner.

(3) No person shall be permitted to sit for the Legal Practitioners' Qualifying Examination, unless the Board, after consideration of a report by the Director of the Centre, is satisfied that such person has satisfactorily attended and completed the course of post-graduate study: Provided that a person who holds a degree or equivalent qualification referred to in paragraph (c) of subsection (1), shall not be entitled to commence with and attend the course of post-graduate study, unless he or she has passed all examinations of the course of undergraduate study referred to in subparagraph (i) of that paragraph.

(4) The Minister may from time to time, on recommendation of the Board, prescribe by notice in the *Gazette*-

- (a) for the purposes of subsection (1) (a), any degree or equivalent qualification in law from a university or other comparable educational institution in a foreign country, the legal system of which is based on common law, which shall be accepted as a sufficient qualification for the purposes of that subsection;
- (b) for the purposes of subsection (1) (c), any degree or equivalent qualification in law from a university or other comparable educational institution in a foreign country, the legal system of which is not based on common law, which shall be accepted as a sufficient qualification for the



purposes of that subsection.

## **6 Enrolment of persons who were enrolled as attorneys or advocates before the commencement of this Act**

(1) The Registrar shall enter in the Roll the name of every person who immediately before the commencement of this Act-

- (a) was an attorney in Namibia under the Attorneys Act, 1979 (Act 53 of 1979);
- (b) was an advocate in Namibia under the Admission of Advocates Act, 1964 (Act 74 of 1964), who-
  - (i) was admitted and enrolled as such at any time before the period of 12 months preceding the date of commencement of this Act; or
  - (ii) was admitted and enrolled as such during the said period of 12 months and has complied with the requirements of section 3A (1) of that Act or was exempted therefrom; or
- (c) was undergoing articles in Namibia in terms of the Attorneys Act, 1979, having had his or her name removed from the roll of advocates.

(2) A person who was admitted and enrolled as an advocate in terms of the Admission of Advocates Act, 1964, during the period of 12 months preceding the date of commencement of this Act, but who has not complied with the requirements of section 3A (1) of that Act, shall, if he or she, by virtue of the provisions of section 94 (3) of this Act, complies with those requirements not later than 12 months after the commencement of this Act, or such longer period as the Minister by notice in the *Gazette* may determine, be enrolled by the Registrar.

(3) A person referred to in subsection (2) who fails to comply with the requirements of section 3A (1) of the Admission of Advocates Act, 1964 before the expiration of the period referred to in subsection (2), shall, notwithstanding the fact that he or she was admitted and enrolled as an advocate in terms of that Act, not be enrolled under this Act, unless he or she submits to the Registrar a certificate issued by the Board, subject to subsections (2) and (3) of section 5 of this Act, in which it is stated that he or she-

- (a) has satisfactorily undergone practical legal training; and
- (b) has passed the Legal Practitioners' Qualifying Examination.

(4) A person enrolled in accordance with the provisions of subsection (1), (2) or (3) shall be deemed to have been admitted and authorised to practise as a legal practitioner under this Act.

(5) The enrolment of a person in accordance with the provisions of subsection (1)-

- (a) shall be subject to the terms of any order of the Court whereby he or she has been suspended from practice as an advocate or attorney before the commencement of this Act;
- (b) shall not relieve such person of liability under this Act for unprofessional or dishonourable or unworthy conduct on his or her part before the commencement of this Act.

## **7 Juristic person may conduct a practice**

(1) A private company may, notwithstanding anything to the contrary contained in this Act, conduct a practice if-

- (a) such company is incorporated and registered as a private company under the Companies Act, 1973 (Act 61 of 1973), with a share capital, and its memorandum of association provides that all present and past directors of the company shall be liable jointly and severally with the company for the debts and liabilities of the company contracted during their periods of office;
- (b) only natural persons who are legal practitioners and who are in possession of current fidelity fund certificates are members or shareholders of the company or persons having an interest in the shares of the company;
- (c) the name of the company consists solely of the name or names of any of the present or past members of the company or of persons who conducted, either on their own account or in partnership, any practice which may reasonably be regarded as a predecessor of the practice of the company: Provided that the words "and associates" or "and company" may be included in the name of the company.

(2) Every shareholder of the company shall be a director of the company, and no person other than a shareholder of the company shall be a director thereof.

(3) If a shareholder of the company or a person having an interest in the shares of the company, dies or ceases to conform to the requirements of subsection (1) (b), he or she or his or her estate, as the case may be, may as from the date on which he or she dies or ceases to conform, continue to hold the relevant shares or interest in the shares in the company for a period of six months or for such longer period as the Council may approve.

(4) No voting rights shall attach to any share held in terms of subsection (3), and the holder of any such share shall not act as a director of the company or receive, directly or indirectly, any director's fees or remuneration or participate in the income of or profits earned by the company in its practice.

(5) If the articles of association of the company so provide, the company may, without confirmation by a court, upon such conditions as it may deem expedient, purchase any shares held in it, and the authorised share capital of the company shall not be reduced thereby.

(6) Shares purchased in terms of subsection (5) shall be available for allotment in terms of the articles of association of the company.

(7) Notwithstanding anything to the contrary contained in any other law, the articles of association of the company may restrict a member of the company to appoint only another member of the company to attend, speak or vote in his or her stead at any meeting of the company.

(8) If the company ceases to conform to any of the requirements of subsection (1), it shall forthwith cease to practise, and shall, as from the date on which it ceases so to conform, not be recognized in law as a legal practitioner, but subject to subsection (9).

(9) The provisions of subsection (8) shall not, during the period contemplated in

subsection (3), apply to a company by reason only that a shareholder of the company or a person having an interest in the shares of the company has ceased to be a legal practitioner or to be in possession of a fidelity fund certificate.

(10) Any reference in this Act or in any other law to a legal practitioner or to a partner or partnership in relation to legal practitioners, shall be construed as including a reference to a professional company or to a member of such a company, as the case may be, unless the context otherwise indicates.

## **8 Establishment and constitution of Board for Legal Education**

(1) There is hereby established a board to be known as the Board for Legal Education.

(2) The Board shall consist of-

- (a) the Chief Justice, who shall be the chairperson of the Board;
- (b) four persons appointed by the Minister, of whom one shall be a person employed in connection with the training of candidate legal practitioners at the Centre;
- (c) one legal practitioner in the full-time service of the State appointed by the Attorney-General;
- (d) the Prosecutor-General;
- (e) the Dean of the Faculty of Law of the University of Namibia; and
- (f) three legal practitioners appointed by the Council.

(3) If, in the event of the appointment of a member required to be made by the Council in terms of subsection (2) (f), the Council fails to make such appointment within a period of 21 days after the despatch of a letter to it by the Minister in which it is reminded to make the appointment, the Minister may appoint any legal practitioner as the Minister thinks fit as such a member, and any such appointment by the Minister shall be deemed to have been made by the Council.

(4) Subject to section 10, the members of the Board appointed under paragraphs (b) and (f) of subsection (2) shall hold office for a period of three years, and may be reappointed at the expiration of that period.

## **9 Alternate members of the Board**

(1) The Chief Justice may appoint any judge of the Supreme Court or of the Court to act as chairperson of the Board during his or her absence from a meeting of the Board.

(2) The Minister and the Council may, in respect of each member appointed by them to the Board, appoint any other person to be the alternate of such member, but with due regard to the requirements of paragraphs (b) and (f) of section 8(2).

(3) An alternate member appointed under subsection (2)-

- (a) shall vacate his or her office if the member in respect of whom he or she has been appointed as alternate vacates his or her office;
- (b) may act in the place of the member in respect of whom he or she has been appointed during such member's absence or inability to act as a

member.

### **10 Vacation of office and filling of casual vacancies**

(1) The office of a member of the Board appointed under section 8 (2) (b) or (f) shall become vacant if-

- (a) he or she resigns that office by notice in writing delivered to the Chief Justice;
- (b) his or her estate is sequestrated;
- (c) he or she is convicted of an offence and sentenced to a term of imprisonment without the option of a fine;
- (d) he or she has been absent from three consecutive meetings of the Board without the leave of the Board, which shall not be granted for a period exceeding six months at a time;
- (e) in the case of a member appointed by the Council, his or her name is struck off the Roll or he or she is suspended from practice under this Act; or
- (f) he or she is removed from office under subsection (2).

(2) A member of the Board referred to in subsection (1) may be removed from office by the Minister if the Minister is satisfied that he or she is incapacitated by physical or mental illness.

(3) Where a member of the Board referred to in subsection (1) ceases to be a member before the expiration of his or her term of office, the vacancy shall, with due regard to the provisions of paragraph (b) or (f), as the case may be, of section 8 (2), be filled by the appointment of another person for the unexpired portion of the period of office of the member whose office has become vacant.

### **11 General functions of the Board**

(1) In addition to any other powers and functions conferred upon and assigned to the Board by this Act, the functions of the Board shall be-

- (a) to register candidate legal practitioners for training at the Centre and to keep a register in respect of such persons;
- (b) to approve the syllabus of the course of post-graduate study;
- (c) to lay down guidelines in relation to the nature of the practical training to be provided to candidate legal practitioners at the Centre and by legal practitioners to whom they are attached;
- (d) (i) to act as moderator for the Legal Practitioners' Qualifying Examination or to appoint any person or persons to act as such;
- (ii) to set and hold from time to time the examination in conveyancing for the purposes of section 87;
- (e) to issue certificates to-
  - (i) candidate legal practitioners who have passed the Legal Practitioners' Qualifying Examination; and
  - (ii) legal practitioners who have passed the examination in

conveyancing referred to in paragraph (d) (ii);

- (f) to investigate and advise upon any legal education pertaining to the legal profession and any related matters-
  - (i) which the University of Namibia or any university or comparable educational institution outside Namibia may refer to it;
  - (ii) which the Minister may refer to it; or
  - (iii) which the Board may consider necessary or expedient;
- (g) to collaborate with the Faculty of Law of the University of Namibia in designing the syllabus and determining any other requirements of the course of undergraduate study referred to in section 5 (1) (c) (i); and
- (h) to perform such other functions as may be prescribed by the Minister or as it may consider necessary or expedient for the purposes of this Act.

(2) Where, for the purpose of making a recommendation to the Minister in terms of section 5 (4), the Board is required to consider how a particular degree or equivalent qualification in law obtained outside Namibia compares with a degree in law obtained from the University of Namibia, the Board shall cause to be lodged with it originals or authenticated copies of certificates and of official transcripts issued by the competent authority of the relevant university or educational institution, or where such university or institution no longer exists, a verification by any other competent authority in the country where such university or institution was situated as to certificates and official transcripts issued by the university or institution in question: Provided that if, in the case of a degree or qualification obtained before 21 March 1990, the Board is satisfied that neither the original or an authenticated copy of the certificate and the official transcripts can be provided for reasons which the Board considers sufficient and credible in the particular case, the Board may allow duplicates thereof to be lodged for the purpose of this subsection.

[Sub-s. (2) substituted by s. 1 (a) of Act 4 of 1997.]

(3) The certificates and official transcripts lodged with the Board in terms of subsection (2), whether originals or authenticated copies or, where allowed, duplicates, shall be accepted as sufficient information to enable the Board to make its recommendation to the Minister.

[Sub-s. (3) substituted by s. 1 (b) of Act 4 of 1997.]

## **12 Committees of the Board**

(1) The Board may establish one or more committees of the Board for the purpose of performing any function of the Board which the Board may deem fit to delegate to such a committee.

(2) A committee established under subsection (1) shall consist of such members of the Board, including alternate members, as the Board may appoint to the committee.

(3) The Board may designate any member of a committee to be the chairperson thereof.

(4) The Board shall not be divested of any power which has been delegated by it to a committee and may amend or set aside any decision of such a committee.

### **13 Meetings of the Board**

- (1) The first meeting of the Board shall be convened by the chairperson of the Board and thereafter meetings shall be held at such times and places as the Board may determine.
- (2) The chairperson of the Board may at any time convene a special meeting of the Board.
- (3) The majority of the members of the Board shall form a quorum at a meeting of the Board.
- (4) The decision of a majority of the members of the Board present at a meeting thereof shall constitute a decision of the Board, and in the event of an equality of votes in regard to any matter, the person presiding at the meeting shall have a casting vote in addition to his or her deliberative vote.
- (5) The Board may determine the procedure at its meetings and the meetings of any of its committees.

### **14 Performance of administrative work of the Board**

- (1) The administrative work pertaining to the functions of the Board or a committee of the Board shall be performed by officers in the Ministry of Justice made available for that purpose by the Permanent Secretary: Justice.
- (2) The Permanent Secretary: Justice may designate an officer in the Ministry of Justice to act as secretary of the Board or of any committee of the Board.

### **15 Remuneration and allowances of members of the Board**

- (1) A member or alternate member of the Board who is not in the full-time employment of the State shall be paid, in respect of any period during which he or she is engaged in the business of the Board and in respect of any travelling when so engaged, such remuneration and other allowances, if any, as the Minister, with the concurrence of the Minister of Finance, may determine.
- (2) The remuneration and other allowances referred to in subsection (1) and other expenses pertaining to the performance of the functions of the Board shall be defrayed out of moneys appropriated by the National Assembly for the purpose.

### **16 Justice Training Centre**

- (1) There shall, for the purposes of this Act, and subject to section 11 (1) (b), be provided at the Justice Training Centre established by the University of Namibia, a course of post-graduate study for the training of candidate legal practitioners.
- (2) The Centre shall upon the completion of the period of the course of post-graduate study-
  - (a) conduct the Legal Practitioners' Qualifying Examination under the control of the Board; and
  - (b) make the examination results available to the Board for its approval.

## **PART II**

### **PRIVILEGES RESTRICTIONS AND OFFENCES IN CONNECTION WITH**

## **PRACTICE**

### **17 Privileges of legal practitioners**

Subject to the provisions of this Act, a legal practitioner shall have the right to practise the profession in Namibia and shall, without derogating from the generality of that right-

- (a) have the right of audience in any court or tribunal in which persons are entitled by law to legal representation;
- (b) if he or she holds, or is deemed to hold, the certificate in conveyancing referred to in section 87, have the right to present any document for registration in a deeds registry or for attestation or execution by the registrar of deeds;
- (c) if he or she holds, or is deemed to hold, an appointment as notary public under section 86, have the right to perform any act which in terms of any law is required to be performed by a notary public.

### **18 Right of audience in the Supreme Court**

(1) A legal practitioner shall not have the right of audience in the Supreme Court of Namibia unless he or she has practised the profession for a continuous period or for periods amounting in all to, not less than one year and he or she holds a certificate to that effect issued by the Council.

(2) The Council shall, upon application made to it by a legal practitioner who satisfies the Council that he or she has practised the profession for a continuous period of, or for periods amounting in all to, not less than one year, issue to such legal practitioner a certificate as contemplated in subsection (1).

### **19 Right of audience of candidate legal practitioners**

A candidate legal practitioner to whom a certificate has been issued by the Centre certifying that such candidate legal practitioner has completed a period of six months training under the course of post-graduate study, shall have the right of audience

- (a) in any Lower Court in any matter; and
- (b) in Chambers in any High Court proceedings,

but not after expiration of a period of two years after his or her registration as a candidate legal practitioner by the Board.

### **20 Prohibition against practising without fidelity fund certificate**

(1) Subject to section 91, a legal practitioner shall not practise on his or her own account or in partnership, unless he or she holds a fidelity fund certificate or is exempted from holding such a certificate by virtue of the provisions of section 67.

(2) A legal practitioner who practises or acts in contravention of subsection (1) shall not be entitled to any fee, reward or disbursement in respect of anything done by him or her while so practising or acting, and shall be guilty of an offence and liable on conviction to a fine not exceeding N\$200 000 or to imprisonment for a period not exceeding 10 years.

## **21 Certain offences by unqualified persons**

(1) A person who is not enrolled as a legal practitioner shall not-

- (a) practise, or in any manner hold himself or herself out as or pretend to be a legal practitioner;
- (b) make use of the title of legal practitioner, advocate or attorney or any other word, name, title, designation or description implying or tending to induce the belief that he or she is a legal practitioner or is recognised by law as such;
- (c) issue out any summons or process or commence, carry on or defend any action, suit or other proceeding in any court of law in the name or on behalf of any other person, except in so far as it is authorised by any other law; or

[Para. (c) substituted by s. 2 of Act 4 of 1997.]

- (d) perform any act which in terms of this Act or any regulation made under section 81 (2) (d), he or she is prohibited from performing.

(2) A person who contravenes any of the provisions of subsection (1) shall be guilty of an offence and liable on conviction to a fine not exceeding N\$100 000 or to imprisonment for a period not exceeding 5 years or to both such fine and such imprisonment.

## **22 Unqualified persons not to prepare certain documents or instruments**

(1) Any person, not being a legal practitioner, who prepares or draws up for or on behalf of any other person any of the following documents, namely-

- (a) a will or other testamentary instrument;
- (b) any contract, deed or instrument relating to the creation or dissolution of a partnership or a variation of the terms thereof;
- (c) any contract, deed or instrument for the acquisition, disposal, exchange or lease of immovable property or a right relating to immovable property, other than a contract for the lease of immovable property for a period less than five years;
- (d) the memorandum or articles of association or prospectus of a company,

and who charges, demands or receives any fee or reward, whether in cash or in any other form, or knowingly permits any person to charge, demand or receive such fee or reward, for the service rendered by him or her in connection with the preparation or drawing up of such document, shall be guilty of an offence and liable on conviction to a fine not exceeding N\$100 000 or to imprisonment for a period not exceeding 5 years, or to both such fine and such imprisonment.

(2) The provisions of subsection (1) shall not apply to-

- (a) any person in the employment of a legal practitioner preparing or drawing up any of the documents concerned in the course of his or her employment and on behalf of his or employer;
- (b) a person in the employment of the State or any body corporate established by any law, preparing or drawing up any of the documents or instruments concerned in the course of his or her official duty;



- (c) a person acting in the capacity of trustee of an insolvent estate or executor, administrator or curator, or a liquidator or judicial manager of a company or close corporation, deputy-sheriff or messenger of the court by virtue of an appointment by a competent authority in terms of any law, drawing up or preparing any of the documents concerned in the course of his or her statutory duties and receiving therefor such fees as may be allowed by law; or
- (d) a registered accountant and auditor who is a member of the Institute of Chartered Accountants of Namibia drawing up or preparing the memorandum or articles of association or prospectus of any company.

(3) No document or instrument referred to in subsection (1) shall be invalid by reason only of the fact that it has been drawn up or prepared in contravention of the provisions of that subsection.

[S. 22 substituted by s. 3 of Act 4 of 1997.]

### **23 Prohibition against practising by or in association with legal practitioners struck off the Roll or suspended from practice**

(1) No person whose name has been struck off the Roll or who has been suspended from practice shall continue to practise as a legal practitioner directly or indirectly on his or her own account or in partnership or association with another person, nor shall he or she, except with the written consent of the Council, be employed in any capacity connected with the practice of a legal practitioner.

(2) No legal practitioner shall, in connection with his or her practice, without the written consent of the Council, employ or remunerate a person who is disqualified from practising by reason of the fact that his or her name has been struck off the Roll or that he or she is suspended from practising.

(3) The Council may, for the purposes of subsection (1) or (2), grant its consent for such period and subject to such conditions as the Council may think fit.

(4) A person who contravenes subsection (1) or (2) shall be guilty of an offence and liable on conviction to a fine not exceeding N\$50 000 or to imprisonment for a period not exceeding 2 years or to both such fine and such imprisonment.

### **24 Saving in respect of certain officials acting under a delegation of the Prosecutor-General**

Nothing in this Part shall be construed as preventing an official, not being enrolled as a legal practitioner, to whom the Prosecutor-General, acting under Article 88 (2) (d) of the Namibian Constitution has delegated the authority to conduct criminal proceedings in any court from so conducting such proceedings.

## **PART III**

### **KEEPING OF ACCOUNTS BY LEGAL PRACTITIONERS**

#### **25 Legal practitioners' books of accounts and power of Council to inspect**

(1) Every legal practitioner who in terms of this Act is required to hold a fidelity fund certificate shall keep, exclusively in respect of his or her practice, such books of

account as may be necessary to show and distinguish in connection with such practice-

- (a) moneys received and moneys paid on his or her own account;
- (b) moneys received, held or paid by him or her for or on account of another person;
- (c) moneys invested by him or her in a trust savings or other interest-bearing account referred to in section 26 (2) or (3) and interest on moneys so invested which is paid over or credited to him or her;
- (d) any interest on moneys deposited in his or her trust banking account opened in terms of section 26(1) and which is paid over or credited to him or her.

(2) In order to ascertain whether the provisions of subsection (1) and section 26 have been or are being complied with, the Council, acting either on its own motion or upon a written complaint lodged with it, may appoint a registered accountant and auditor who is a member of the Institute of Chartered Accountants of Namibia to inspect the books of account of a legal practitioner referred to in subsection (1).

(3) An accountant and auditor appointed in terms of subsection (2) shall report to the Council in such a manner as not to disclose confidential information entrusted to the legal practitioner whose books of account he or she has inspected.

(4) If, upon an inspection in terms of subsection (2), it is found that the legal practitioner has not complied with any of the provisions of subsection (1) or of section 26, the Council may recover from the legal practitioner concerned the costs of the inspection.

(5) For the purposes of subsections (1) and (2) "books of account" includes any record or document kept by or in the custody or under the control of a legal practitioner which relates to-

- (a) money invested in a trust savings or other interest-bearing account referred to in section 26 (2) or (3) or interest on money so invested;
- (b) an estate of a deceased person or an insolvent estate or an estate placed under curatorship, in respect of which such legal practitioner is the executor, trustee or curator or which he or she administers on behalf of the executor, trustee or curator; or
- (c) such legal practitioner's practice.

## **26 Opening of trust banking account**

(1) Every legal practitioner who holds or receives moneys for or on behalf of any person shall open and keep a separate trust banking account at a banking institution in which he or she shall deposit all such moneys.

- (2) (a) A legal practitioner may invest in a separate trust savings or other interest-bearing account opened by him or her with a banking institution or building society moneys deposited in his or her trust banking account which is not immediately required for any particular purpose.
- (b) A trust savings or other interest-bearing account referred to in paragraph (a) shall contain a reference to this subsection.

(3) A separate trust savings or other interest-bearing account-

- (a) which is opened by a legal practitioner for the purpose of investing therein, on the instructions of any person, any moneys deposited in his or her trust banking account by that person; and
- (b) over which the legal practitioner exercises exclusive control as trustee, agent or stakeholder or in any other fiduciary capacity,

shall contain a reference to this subsection.

(4) A legal practitioner shall, at the time and in the manner prescribed, pay over to the fund-

- (a) the interest, if any, on moneys deposited in such legal practitioner's trust banking account in terms of subsection (1); and
- (b) the interest on moneys invested by such legal practitioner in a separate trust savings or other interest-bearing account in terms of subsection (2).

(5) The investment by a legal practitioner of any moneys referred to in subsection (1) in a trust savings or other interest-bearing account referred to in subsection (2) or (3) shall not relieve such legal practitioner of any liability in respect of such moneys.

### **27 Trust account moneys not part of the assets of legal practitioner**

(1) Subject to subsection (2), an amount standing to the credit of a legal practitioner's trust account shall not-

- (a) be regarded as forming part of the assets of the legal practitioner;
- (b) be liable to attachment at the instance of or on behalf of a creditor of that legal practitioner.

(2) Any excess amount remaining on a legal practitioner's trust account after payment of-

- (a) all claims of persons whose moneys have, or should have, been deposited or invested in such trust account; and
- (b) all claims in respect of interest on moneys so invested, including a claim of the fund in respect of interest due to it in terms of section 26 (4),

shall be deemed to form part of the assets of that legal practitioner.

### **28 Control of operation of trust account**

(1) The Court may, on application made by the Council, and on good cause shown, prohibit any legal practitioner from operating in any way on his or her trust account, and may appoint a *curator bonis* to control and administer such trust account with such rights, duties and powers in relation thereto as the Court may deem fit.

(2) If a legal practitioner-

- (a) dies;
- (b) becomes insolvent;
- (c) in the case of a professional company, is liquidated or placed under judicial management, whether provisionally or finally;
- (d) is struck off the Roll or suspended from practising;

- (e) is declared by a court of competent jurisdiction to be incapable of managing his or her own affairs; or
- (f) abandons his or her practice or ceases to practise,

the Master of the High Court may, upon application made by the Council or by a person having an interest in the trust account of that legal practitioner, appoint a *curator bonis* to control and administer that trust account with such of the prescribed rights, duties and powers as the Master may deem fit.

(3) A person aggrieved by a decision of the Master in terms of subsection (2), may, within 30 days after the decision becomes known to him or her, appeal against that decision to the Court, and the Court may confirm or vary the decision or give such other decision as in its opinion the Master ought to have given.

(4) Nothing contained in subsection (1) or (2) shall be construed as preventing any legal practitioner who was practising in partnership with a legal practitioner referred to in subsection (2) from continuing to operate on the trust account of the partnership.

### **29 Rights and duties of banking institutions and building societies with respect to trust accounts**

(1) A banking institution or building society at which a legal practitioner keeps his or her trust account or a separate account forming part of his or her trust account shall, whenever so directed by the Council, furnish the Council with a signed certificate which indicates the balance of such account at the date or dates designated by the Council.

(2) A banking institution or building society referred to in subsection (1), shall not-

- (a) by reason only of the name or style by which a trust account referred to in that subsection is distinguished, be deemed to have knowledge that the legal practitioner is not entitled to all moneys paid into or credited to such account;
- (b) have or obtain any recourse or right, whether by way of set-off, counter-claim, charge or otherwise, against moneys standing to the credit of any such account in respect of a liability of the legal practitioner to the banking institution or building society which is not a liability arising out of or in connection with that account.

(3) The provisions of subsection (2) (a) shall not be construed as relieving a banking institution or building society from a liability or obligation to which it would be subject apart from this Act.

### **30 Rights of legal practitioner with respect to moneys in trust account**

The provisions of this Part shall not be construed as taking away or affecting any just claim, lien, counter-claim, right of set-off, or charge of any kind which a legal practitioner has against or on any moneys held or received by him or her on account of another person.

### **31 Offences in relation to trust accounts**

A legal practitioner who contravenes or fails to comply with any of the provisions of

section 25 (1) or section 26 (1), (2) (b), (3) or (4) shall be guilty of an offence and liable on conviction to a fine not exceeding N\$200 000 or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment.

## **PART IV**

### **DISCIPLINE AND REMOVAL FROM AND RESTORATION TO THE ROLL**

#### **32 Removal from Roll or suspension from practice of legal practitioners**

(1) The Court may, on application made to it in accordance with subsection (2), order that the name of a legal practitioner be struck off the Roll or that a legal practitioner be suspended from practice-

- (a) if he or she no longer conforms to any of the requirements of section 4 (1) (c); or
- (b) if he or she is guilty of unprofessional or dishonourable or unworthy conduct of a nature or under circumstances which, in the opinion of the Court, show that he or she is not a fit and proper person to continue to be a legal practitioner.

(2) An application in terms of subsection (1)-

- (a) on any of the grounds mentioned in paragraph (a) thereof, shall be made by the Law Society;
- (b) on the grounds mentioned in paragraph (b) thereof, shall be made by the Disciplinary Committee.

#### **33 Unprofessional or dishonourable or unworthy conduct**

(1) For the purposes of this Act, unprofessional or dishonourable or unworthy conduct on the part of a legal practitioner includes

- (a) contravening section 20 (1), 23 (2), any of the provisions of Part III or section 67 (3);
- (b) subject to the provisions of any other law, making over to or sharing or dividing with any person, other than a legal practitioner in or outside Namibia, either by way of partnership, commission or allowance or in any other manner a portion of his or her professional fees;
- (c) in any way assisting, allowing or enabling a person who is not a legal practitioner to charge, recover or receive a fee or derive remuneration in respect of or in connection with the preparation or execution of a document or the performance of any professional work which only a legal practitioner is permitted by law to prepare, execute or perform, or in any way conniving at an arrangement, agreement or understanding whatsoever whereby such fee or remuneration is or shall be charged, recovered or received by such unqualified person;
- (d) allowing his or her name together with his or her qualifications as a legal practitioner to appear by way of advertisement or notification or information upon business letterheads, accounts or other documents whatsoever in conjunction with the name of a person who is not a legal practitioner so as to convey, or be capable of conveying, the impression

- that he or she is associated in his or her legal practice with that person;
- (e) subject to the provisions of any other law, entering into a contract or partnership with or of employment by a person who is not a legal practitioner, the direct or indirect result of which is-
    - (i) to enable that person to enjoy, share or participate in fees reserved solely to a legal practitioner; or
    - (ii) to secure for the legal practitioner the benefit of professional business solicited by such person or any other unqualified person;
  - (f) accepting or agreeing or offering to accept, for any professional work performed or to be performed by him or her for or on behalf of any client, remuneration that is less than the minimum permitted to be charged in accordance with any rate or scale of charges prescribed under this Act or prescribed by or under any other law;
  - (g) acting or purporting to act for any person in any matter without having been instructed by that person or a person authorised to give instruction on behalf of the person he or she represents or is to represent;
  - (h) wilfully misleading a court or tribunal, or allowing it to be misled;
  - (i) directly or indirectly procuring or attempting to procure the employment of himself or herself, or his or her partner or assistant, as a legal practitioner through or by the intervention of another person to whom remuneration for obtaining such employment has been given by him or her, or agreed or promised to be so given;
  - (j) deceiving or misleading a client or allowing the client to be deceived or misled in any respect material to such client.

(2) The provisions of subsection (1) shall not restrict the power of the Court or the Disciplinary Committee to determine that an act or omission not specified in subsection (1) or any other law, constitutes unprofessional or dishonourable or unworthy conduct on the part of a legal practitioner.

### **34 Disciplinary Committee**

(1) For the purpose of exercising disciplinary control over legal practitioners and candidate legal practitioners in accordance with the provisions of this Act, there shall be a committee to be called the Disciplinary Committee, which shall consist of-

- (a) four legal practitioners appointed by the Council; and
- (b) one person appointed by the Minister, who shall act as secretary of the Disciplinary Committee.

(2) If the Council fails or refuses to make an appointment in terms of subsection(1) (a) within a period of 21 days after the Minister in writing has reminded the Council to make the appointment, the Minister may appoint any legal practitioner whom he or she deems fit as a member of the Disciplinary Committee and any such appointment by the Minister shall be deemed to have been made by the Council.

(3) A member of the Disciplinary Committee shall hold office for a period of two years from the date of his or her appointment and shall be eligible for reappointment.

(4) During the temporary absence of any member of the Disciplinary Committee or in the event of any such member's inability to act, the Council or the Minister, as the case may be, shall appoint another person to act as a temporary member in the place of the member who is absent or unable to act, and the provisions of subsection (2) shall apply *mutatis mutandis*.

(5) The members of the Disciplinary Committee shall elect a chairperson from among their number, and in his or her absence, the remaining members and any temporary members appointed in terms of subsection (4) shall from among their number appoint an acting chairperson.

(6) Three members of the Disciplinary Committee shall form a quorum at a meeting thereof.

(7) A question before the Disciplinary Committee shall be decided by a majority of votes of the members present, and in the event of an equality of votes in regard to any matter, the person presiding at the meeting shall have a casting vote in addition to his or her deliberative vote.

(8) The Disciplinary Committee may determine the procedure at its meetings.

(9) Members of the Disciplinary Committee who are not in the full-time employment of the State shall, in respect of expenses incurred by them in connection with travelling and accommodation when discharging their duties, be paid such allowances as the Minister, with the concurrence of the Minister of Finance, may determine.

(10) The administrative and clerical work of the Disciplinary Committee shall be performed by officers in the Ministry of Justice made available by the Permanent Secretary: Justice for the purpose.

(11) The expenses incidental to the functions of the Disciplinary Committee, including the remuneration of members in accordance with subsection (9), shall be defrayed from moneys appropriated by the National Assembly for that purpose.

### **35 Powers and procedure of Disciplinary Committee with respect to legal practitioners**

(1) An application by the Council, or a person affected by the conduct of a legal practitioner, to require a legal practitioner to answer allegations of alleged unprofessional or dishonourable or unworthy conduct, shall be made to and be heard by the Disciplinary Committee in accordance with the rules made under section 39.

(2) Where in the opinion of the Disciplinary Committee an application made in terms of subsection (1) does not disclose a *prima facie* case of unprofessional or dishonourable or unworthy conduct on the part of the legal practitioner concerned, the Disciplinary Committee may summarily dismiss such application without requiring the legal practitioner to answer the allegations and without hearing the application.

(3) An applicant who is aggrieved by the decision of the Disciplinary Committee under subsection (2) may appeal to the Court against that decision, and the Court may either confirm the decision of the Disciplinary Committee or order the Disciplinary Committee to hear the application and deal with it in accordance with subsection (4).

(4) Where in the opinion of the Disciplinary Committee an application made in terms of subsection (1) discloses a *prima facie* case of unprofessional or dishonourable or unworthy conduct on the part of a legal practitioner or where an order contemplated in subsection (3) has been made by the Court, the Disciplinary Committee shall-

- (a) fix a date and the time and place for the hearing of the application and notify the applicant and the legal practitioner concerned thereof; and
- (b) not later than 14 days before the date fixed for the hearing of the application, furnish the legal practitioner concerned with a copy of any affidavit made in support of the application and shall give him or her an opportunity to inspect any document lodged with the Disciplinary Committee in relation to the application.

(5) The Disciplinary Committee may appoint a legal practitioner to lead evidence at the hearing of the application and to cross-examine the legal practitioner to whom the application relates and witnesses called by him or her and to present argument.

(6) A legal practitioner shall be entitled to legal representation at the hearing of an application by the Disciplinary Committee.

(7) At the conclusion of the hearing of an application the Disciplinary Committee-

- (a) if it is satisfied that a case of unprofessional or dishonourable or unworthy conduct has not been made out against the legal practitioner, shall dismiss the application;
- (b) if it is satisfied that the legal practitioner is guilty of the unprofessional or dishonourable or unworthy conduct alleged in the application or in respects other than those so alleged, shall act in accordance with the provisions of either subsection (8) or (9).

(8) If the Disciplinary Committee is of the opinion that the unprofessional or dishonourable or unworthy conduct of which the legal practitioner is guilty does not justify an application to the Court for an order to strike the legal practitioner's name from the Roll or to suspend him or her from practice, and that the case may adequately be dealt with by itself, it may-

- (a) reprimand the practitioner; or
- (b) reprimand him or her and impose upon him or her a penalty not exceeding N\$10 000.

(9) If the Disciplinary Committee is of the opinion that the unprofessional or dishonourable or unworthy conduct of which the legal practitioner is guilty justifies an application to the Court for an order to strike the legal practitioner's name from the Roll or to suspend him or her from practice, it shall proceed to make such application to the Court in terms of section 32.

(10) A legal practitioner upon whom a penalty has been imposed by the Disciplinary Committee under subsection (8) (b) may, within 30 days of the notification to him or her of the decision of the Disciplinary Committee, appeal to the Court against that decision.

(11) The Disciplinary Committee, when acting in accordance with the provisions of subsection (8), may make such order as to the reimbursement of costs incurred by the Disciplinary Committee in connection with the application, including witness expenses, as it may think fit.



(12) Any penalty imposed under subsection (8) (b) and any costs payable in accordance with subsection (11) shall-

- (a) be moneys owing to the State Revenue Fund; and
- (b) be recoverable by legal process in the magistrate's court.

### **36 Powers and procedure of Disciplinary Committee with respect to candidate legal practitioners**

(1) In disciplining a candidate legal practitioner, the Disciplinary Committee may-

- (a) reprimand the candidate legal practitioner;
- (b) reprimand and order the candidate legal practitioner to pay a penalty not exceeding N\$1 000; or
- (c) withdraw his or her registration as a candidate legal practitioner, either indefinitely or for such period as the Disciplinary Committee may determine.

(2) The grounds and procedure for disciplinary action by the Disciplinary Committee against candidate legal practitioners and the conditions for renewing their registration as candidate legal practitioners, shall be as prescribed by the Minister by regulations made under section 81(1).

### **37 Power of Court**

If, in determining an application made to it in terms of section 32, the Court finds that the legal practitioner to whom the application relates is guilty of unprofessional or dishonourable or unworthy conduct, it may, if in the circumstances of the case it thinks fit so to do, and instead of granting an order that the name of the legal practitioner be struck off the Roll or that he or she be suspended from practice-

- (a) reprimand the legal practitioner; or
- (b) reprimand and order the legal practitioner to pay a penalty not exceeding N\$ 10 000;

and may make any order as to restitution in relation to the case.

### **38 Restoration to Roll**

(1) A person whose name has been struck off the Roll, and a person whose name was removed from the roll of attorneys or the roll of advocates under the Attorneys Act, 1979 (Act 53 of 1979) or the Admission of Advocates Act, 1964 (Act 74 of 1964) before the commencement of this Act, may apply to the Court to have his or her name restored to the Roll.

(2) An application in terms of subsection (1) shall be made in terms of the Rules of Court, and shall be accompanied by recommendations in support thereof of the Council and the Disciplinary Committee.

### **39 Rules governing Disciplinary Committee**

(1) The Minister, upon the recommendation of the Disciplinary Committee, may make rules for regulating the making, hearing and determining of applications to the Disciplinary Committee in terms of section 35 (1).

(2) For the purposes of the hearing of an application in terms of section 35 the Disciplinary Committee may-

- (a) summon any person, whether of its own accord or at the request of the applicant or the legal practitioner to whom the application relates, to appear before it at a time and place specified in the summons and to give evidence in relation to any matter concerning the application or to produce any book, document, record or thing having a bearing on the application.
- (b) through the chairperson administer an oath to or take an affirmation from, any person appearing before it to give evidence;
- (c) put questions to any person appearing before it as a witness or require him or her to produce any book, document, record or thing in his or her possession or custody or under his or her control.

(3) A person who gives evidence before the Disciplinary Committee shall be subject to all the obligations and be entitled to all the privileges, including witness fees, to which a witness is subject or entitled in civil proceedings in the magistrates' courts.

(4) A person who has been summoned to attend before the Disciplinary Committee and who-

- (a) refuses or fails without reasonable and sufficient cause to attend and give evidence relevant to the hearing at the time and place stated in the summons;
- (b) refuses to take the oath or make an affirmation when required to do so by the chairperson;
- (c) refuses or fails without reasonable and sufficient cause to produce any document, record, book or thing which he or she has been required in the summons to produce;
- (d) refuses to answer or to answer fully and satisfactorily to the best of his or her knowledge and belief a question lawfully put to him or her,

shall be guilty of an offence and liable on conviction to a fine not exceeding N\$5 000.

## **PART V**

### **LAW SOCIETY OF NAMIBIA**

#### **40 Establishment of Law Society**

There is hereby established the Law Society of Namibia which shall by that name be a body corporate with perpetual succession and a common seal, and which shall be capable of suing and being sued and, subject to the provisions of this Act, do and suffer all such acts and things as bodies corporate may lawfully do and suffer.

#### **41 Objects of Law Society**

The objects of the Law Society shall be-

- (a) to maintain and enhance the standards of conduct and integrity of all members of the legal profession;

- (b) to present the views of the legal profession;
- (c) to further the development of law as an instrument of social engineering and social justice;
- (d) to encourage and promote efficiency in and responsibility in relation to the profession;
- (e) to promote the education of lawyers at all stages and levels, with particular emphasis on the broadening of such education;
- (f) to make recommendations to interested parties in relation to the training of lawyers;
- (g) to define and enforce correct and uniform practice and discipline among members;
- (h) to give all necessary assistance to the effective implementation of any legal aid scheme established and governed by or under any law;
- (i) to promote social intercourse among members;
- (j) to consider and deal with all matters affecting the professional interest of members;
- (k) to co-operate with the representative bodies of other professional bodies;
- (l) to promote applied research in the development of the law and participate in the reform of the law by the Government and other agencies;
- (m) to seek the enhancement of the Rule of Law and promote the protection of human rights;
- (n) to represent, protect and assist members with regard to their conditions of practice and related matters.

#### **42 Powers of Law Society**

The Law Society may for the purpose of the attainment of its objects-

- (a) acquire or hire movable or immovable property;
- (b) develop, hypothecate, let, sell or otherwise dispose of movable or immovable property of the Law Society;
- (c) make charitable donations and grants-in-aid in support of projects which would benefit the legal profession;
- (d) accept, draw, endorse, issue, make, pay or perform any other act in respect of negotiable instruments;
- (e) invest the funds of the Law Society which are not immediately required upon such security as may from time to time be determined by the Council;
- (f) raise or borrow money, in such manner as the Council may think fit, which is required by the Law Society in connection with its functions;
- (g) employ, and determine the remuneration and other conditions of service of the staff of the Law Society;
- (h) conclude an agreement with any person for the performance of any

- particular act or particular work or the rendering of particular services;
- (i) enter into contracts in connection with the carrying out of its duties, the performance of its functions or the exercise of its powers;
  - (j) establish or promote or administer or assist in the establishment, promotion or administration of-
    - (i) insurance schemes;
    - (ii) medical aid schemes or medical benefit schemes;
    - (iii) pension funds or provident funds or pension schemes or benevolent schemes,to benefit members and former members of the Law Society, employees of members, officials and employees of the Law Society and the dependants of such members, former members, officials and employees;
  - (k) appear in support of or in opposition to, or abide by the decision of any court, in any proceedings brought in terms of the provisions of this Act and, if permitted by any other law, such other law;
  - (l) appoint representatives of the Law Society to serve on a board, committee, institution or any other body where or when required to do so by or under any law;
  - (m) do anything that is necessary for or conducive to the attainment of the objects of the Law Society.

#### **43 Membership of Law Society**

- (1) Every person enrolled as a legal practitioner in terms of this Act shall be a member of the Law Society.
- (2) A member who is suspended from practice in terms of this Act shall not be entitled to the rights and privileges of membership of the Law Society during the period of his or her suspension, and a member whose name is struck off the Roll shall cease to be a member of the Law Society.

#### **44 General meetings of Law Society**

- (1) Once in each calendar year there shall be held a general meeting of members of the Law Society: Provided that the first annual general meeting of the Law Society shall be held not later than four months after the date of commencement of this Act.
- (2) The business to be transacted at the annual general meeting shall include-
  - (a) the election of members of the Council to serve during the ensuing year;
  - (b) the appointment of an auditor; and
  - (c) the consideration of any business of which due notice has been given in accordance with subsection (4).
- (3) The Council may at any time, and shall if demanded by at least one-tenth of the members of the Law Society convene a special general meeting of members of the Law Society.
- (4) At least 21 days prior to the date fixed for an annual general meeting or a special general meeting written notice of the meeting shall be sent to each member of the

Law Society.

(5) A quorum for an annual or a special general meeting of the Law Society shall be one-fifth of the members of the Law Society, either present or represented.

#### **45 Council of Law Society**

(1) For the proper and effective management of the affairs of the Law Society there shall be an executive committee to be known as the Council, which shall consist of nine members who shall be elected by the Law Society in annual general meeting from among its members in the prescribed manner, and of whom at least four shall be legal practitioners who are in private practice.

(2) As soon after the election of members of the Council as it is practicable to do so, the Council shall elect from among its members a chairperson and a vice-chairperson.

(3) Members of the Council shall hold office until the close of the next annual general meeting at which an election of members of the Council takes place, and shall be eligible for re-election during the annual general meeting, but if for any reason the Law Society fails to elect the members of the Council to succeed the members holding office, the members holding office shall continue in office until their successors are elected into office.

#### **46 Vacation of office and filling of casual vacancy in Council**

(1) A member shall vacate his or her office in the Council-

- (a) if he or she, without the leave of the chairperson, is absent from Namibia for a continuous period of six months or he or she has failed to attend four consecutive meetings of the Council; or
- (b) in such other circumstances as may be prescribed by the Council.

(2) When a member of the Council vacates his or her office before the expiration of his or her term of office, the Council may appoint another member of the Law Society to fill the vacancy for the unexpired portion of such term of office.

#### **47 Duties of Council**

The Council shall-

- (a) with due regard to the provisions of section 44 (1), convene general meetings of the Law Society, and determine the date, time and place of such meetings and the business to be transacted at such meetings;
- (b) make rules providing for the procedure at general meetings of the Law Society, and the manner in which motions shall be submitted to such meetings;
- (c) deposit all moneys of the Law Society received by it with a banking institution or a building society;
- (d) keep proper books of account, showing revenue and expenditure and record of assets and liabilities of the Law Society.

## **48 Powers of Council**

The Council may exercise the powers of the Law Society and, without limiting the generality of that power, may-

- (a) prescribe the books, records, certificates or other documents to be kept, maintained or issued for the purposes of this Act, the form thereof, the inspection thereof by persons authorised to do so by the Council, and the circumstances and manner in which alterations may be effected thereto;
- (b) fix the subscriptions, fees, levies or other charges which shall, subject to subsection (2), be payable to the Law Society by the members of the Law Society;
- (c) prescribe the information to be furnished to the secretary of the Law Society by any person who-
  - (i) commences or discontinues to practise as a legal practitioner;
  - (ii) takes up employment or ceases to be employed as a legal practitioner;
  - (iii) enters into or withdraws from a partnership with any other legal practitioner;
  - (iv) while practising as a legal practitioner changes his or her business or residential address;
- (d) prescribe the manner of assessment of the fees payable by any person to a legal practitioner in respect of the performance on behalf of such person of non-litigious work and in respect of expenses reasonably incurred by the legal practitioner in connection with the performance of that work and, at the request of such person or legal practitioner or of its own accord, assess such fees in the prescribed manner;
- (e) pay an allowance to any person to cover expenses reasonably incurred by him or her in connection with any act performed at the request or under the directions of the Council on behalf of or for the benefit of the Law Society;
- (f) subject to such conditions as it may deem fit to impose, permit members of the Law Society to form associations of such members, to be known as regional circles, in respect of such regions as the Council may determine from time to time, and-
  - (i) determine the duties, functions and powers of such circles;
  - (ii) designate in respect of each such circle a place as its headquarters; and
  - (iii) determine the constitution of bodies to be responsible for the management of the affairs of such circles;
- (g) prescribe the conditions under which a legal practitioner may practise at a branch office or in association with another legal practitioner or another person who carries on the practice of a lawyer outside Namibia;
- (h) prescribe the allowance on fees earned by a legal practitioner for professional services which such legal practitioner is permitted to make to another legal practitioner or to a person carrying on the practice of a

lawyer outside Namibia with whom he or she is not in partnership in respect of any matter on which they were both engaged;

- (i) determine the manner in which the Council shall conduct its business;
- (j) do anything which is required for the proper and effective carrying out of its duties, the performance of its functions or the exercise of its powers.

#### **49 Committees of Council**

(1) The Council may appoint one or more committees to assist it in the exercise of its functions, and may at any time alter the constitution of such a committee and fill a vacancy which occurs in the membership thereof.

(2) The Council may include as a member of a committee any member of the Law Society who is not a member of the Council.

(3) The members of a committee shall elect from among their number the chairperson of the committee.

(4) The Council may delegate and assign to a committee appointed in terms of subsection (1) such of its powers and functions as it may deem fit, but shall not be divested of any power so delegated, and may amend or withdraw a decision of such a committee.

(5) A committee may determine the procedure to be followed at its meetings.

#### **50 Meetings of Council**

(1) A meeting of the Council shall be convened and the proceedings thereof shall be regulated in the manner prescribed.

(2) If the chairperson of the Council is absent from a meeting of the Council, the vice-chairperson shall preside at that meeting and, if both the chairperson and the vice-chairperson are absent, the members present shall appoint one of their number to preside.

(3) The quorum for a meeting of the Council shall be five members.

(4) The decision of the majority of the members of the Council present at a meeting shall be a decision of the Council and, in the event of an equality of votes, the person presiding at the meeting shall have a casting vote in addition to his or her deliberative vote.

#### **51 Income of Law Society exempt from tax**

The income of the Law Society from whatever source shall be exempt from any tax or levy payable under any law relating to taxes on income.

#### **52 Power of Council to make rules**

(1) The Council may, subject to the provisions of subsections (2) and (3), make rules relating to-

- (a) matters required or permitted by this Act to be prescribed by the Council;
- (b) the registers and other records to be kept for the purposes of the Law Society;

- (c) the method of the investigation of complaints against legal practitioners;
- (d) the accounts and records to be kept in relation to the affairs and assets of the Law Society;
- (e) the procedure to be followed and the requirements to be satisfied by a member who wishes to obtain the recommendation of the Law Society for his or her appointment as Senior Counsel;
- (f) the conditions under which and activities for which persons other than legal practitioners may be employed by legal practitioners to assist them in their practices;
- (g) any other matters which the Council considers it necessary or expedient to prescribe for carrying out or giving effect to this Act.

(2) Any rule referred to in subsection (1) shall be made with the approval of the Chief Justice.

(3) The Council shall not submit any draft rule to the Chief Justice for approval unless such draft rule has been approved at a general meeting of the Law Society.

(4) An assessment of fees in terms of a rule made under section 48 (d) shall be subject to review in all respects as if it were a determination by an officer of the Court charged with the taxation of fees and charges.

(5) Rules made under subsection (1) shall come into operation on the date of publication thereof in the *Gazette* or on a subsequent date fixed in the notice of publication.

## **PART VI**

### **LEGAL PRACTITIONERS' FIDELITY FUND**

#### **53 Legal Practitioners' Fidelity Fund**

The Legal Practitioners' Fidelity Fund established by section 2 of the Legal Practitioners' Fidelity Fund Act, 1990 (Act 22 of 1990), shall, notwithstanding the repeal of that Act by this Act, continue to exist under the same name.

#### **54 Purpose of fund**

(1) Subject to the provisions of this Act, the fund shall be applied for the purpose of reimbursing persons who may suffer pecuniary loss as a result of-

- (a) theft committed by a legal practitioner or a candidate legal practitioner attached to, or a person employed by such a legal practitioner, of any money or other property entrusted by or on behalf of such persons to the legal practitioner or to such a candidate legal practitioner or a person employed in the course of the legal practitioner's practice or while acting as executor or administrator in the estate of a deceased person or as a trustee in an insolvent estate or in any other similar capacity; and
- (b) theft of money or other property entrusted to an employee referred to in paragraph (cA) of the definition of "estate agent" in section 1 of the Estate Agents Act, 1976 (Act 112 of 1976), or a legal practitioner referred to in paragraph (d) of that definition, and which has been committed by any



such person under the circumstances, and in the performance of an act, contemplated in those paragraphs, respectively.

(2) The Fund shall not be applied to reimburse any person as contemplated in subsection (1), unless, in the case of a theft committed by-

- (a) a legal practitioner, the legal practitioner was at the time of the theft the holder of a fidelity fund certificate or an exemption granted by the Council under section 67 (2);
- (b) a candidate legal practitioner, the candidate legal practitioner was at the time of the theft attached to a legal practitioner contemplated in paragraph (a); or
- (c) a person employed by a legal practitioner, the legal practitioner by whom such person was employed at the time of the theft was a legal practitioner contemplated in paragraph (a).

[S. 54 amended by s. 4 of Act 15 of 1995.]

#### **55 Fund to vest in and to be held in trust by board of control**

(1) The fund shall vest in and be administrated by a board of control to be known as the Legal Practitioners' Fidelity Fund Board of Control.

(2) The fund shall be held in trust by the board of control for the purposes mentioned in this Part.

(3) The board of control may under its name sue and be sued.

#### **56 Constitution of board of control**

(1) The board of control shall consist of-

- (a) the chairperson of the Council; and
- (b) three legal practitioners appointed annually by the Council, of whom at least two shall be legal practitioners who are not members of the Council, and at least two are persons who have been engaged in private practice for a period of not less than five years.

(2) The Council may appoint an alternate member from among its number to act in the place of the chairperson of the Council during his or her absence or inability to act as a member of the board of control.

#### **57 Period of office of members of board of control**

A member of the board of control appointed under section 56 (1) (b) shall hold office until his or her successor has been appointed and, unless another is appointed in his or her place in any year, he or she shall be deemed to have been reappointed.

#### **58 Vacation of office by members of the board of control**

(1) A member of the board of control shall vacate his or her office if he or she-

- (a) ceases to be a legal practitioner or is suspended from so practising;
- (b) resigns and his or her resignation is accepted by the Council; or

(c) is removed from office under subsection (2).

(2) A member of the board of control referred to in subsection (1) may be removed from office by the Council if he or she-

(a) is incapacitated by physical or mental illness;

(b) is convicted of an offence which, in the opinion of the Council, debars him or her from serving as a member of the board of control.

### **59 Chairperson of board of control**

(1) The board of control shall annually elect one of their number, other than the chairperson of the Council, to be the chairperson of the board of control.

(2) If the chairperson is absent from a meeting of the board of control, the board shall from among its number elect a chairperson for that meeting.

### **60 Meetings of board of control**

(1) The board of control shall meet at such times and at such place as it or its chairperson may determine from time to time.

(2) Three members of the board of control shall constitute a quorum at a meeting thereof.

(3) The decision of the majority of the members of the board of control present at a meeting thereof shall be a decision of the board of control and, in the event of an equality of votes, the person presiding shall have a casting vote in addition to his or her deliberative vote.

### **61 Committees of board of control**

(1) The board of control may appoint one or more committees to assist in the exercise of its functions, and may at any time alter the constitution of such a committee and fill a vacancy which occurs in the membership thereof.

(2) The members of a committee appointed in terms of subsection (1) shall from among their number elect the chairperson of the committee.

(3) The board of control may-

(a) delegate and assign to a committee appointed in terms of subsection (1) such of its powers and functions as it may think fit;

(b) instruct such a committee, either generally or in a specific case, to enquire into and to advise the board of control on any matter in relation to the functions of the board of control.

(4) The board of control shall not be divested of any power delegated to a committee thereof and may amend or withdraw a decision of such a committee.

### **62 Validity of resolution signed by all members of board of control**

A resolution in writing of the board of control signed by all its members shall be as valid as if it had been passed at a meeting of the board.

### **63 Revenue of fund**

The fund shall consist of-

- (a) the annual contributions by legal practitioners and interest paid to the fund in terms of this Act;
- (b) the revenue obtained from investments of the fund;
- (c) money recovered for the benefit of the fund;
- (d) money received on behalf of the fund from an insurance company under a contract of indemnity referred to in section 66;
- (e) other money lawfully paid into the fund.

### **64 Banking account**

(1) Money in the fund shall be paid into an account at a banking institution or building society to the credit of an account to be known as the Legal Practitioners' Fidelity Fund Account.

(2) The board of control may from time to time invest moneys of the fund which are not immediately required for the purposes mentioned in this Act.

### **65 Audit**

(1) The accounts of the fund shall be audited by a registered accountant and auditor appointed by the board of control.

(2) A person appointed under subsection (1) shall, at least once in every year and not later than a date to be determined by the board of control, draw up a balance sheet and profit and loss account of the fund and forthwith submit certified copies thereof and of his or her report thereon to the chairperson of the board of control and to the Council.

### **66 Insurance contracts for purpose of indemnifying fund and legal practitioners**

(1) The board of control may enter into a contract with a person or company carrying on fidelity insurance business whereby the fund will be indemnified to the extent and in the manner provided in such contract against liability to pay claims under this Act.

(2) A contract referred to in subsection (1) shall be entered into in respect of legal practitioners generally.

(3) A claimant against the board of control shall not have-

- (a) a right of action against a person or company with whom a contract of indemnity has been entered into in terms of this section, in respect of such contract; or
- (b) a right to any money paid by the insurer in accordance with such contract.

(4) Any money paid by an insurer in accordance with a contract of indemnity shall be paid into the fund for appropriation by the board of control.

## **67 Exemption of certain legal practitioners from requirement to hold a fidelity fund certificate**

(1) A legal practitioner who is in the full-time employment of the State or of a law centre or who is not practising on his or her own account or in partnership or who is exempted under subsection (2) shall, subject to subsection (3), not be required to obtain and hold a fidelity fund certificate.

(2) Upon application made to it by a legal practitioner practising or intending to practise as a legal practitioner for his or her own account or in partnership, the Council may exempt such practitioner from holding a fidelity fund certificate if-

- (a) in the case of a legal practitioner practising or intending to practise on his or her own account, such legal practitioner furnishes the Council with a written declaration stating that he or she will not in the conduct of his or her practice accept or receive or hold moneys for or on account of another person; or
- (b) in the case of a legal practitioner practising or intending to practise in partnership, such legal practitioner furnishes the Council with a written declaration signed by every person who is or will be a member of such partnership stating that neither such partnership nor any member thereof will in the conduct of the practice of the partnership accept or receive or hold moneys for or on account of another person.

(3) Any legal practitioner who has been exempted under subsection (2) from holding a fidelity fund certificate and who in the conduct of his or her practice accepts or receives or holds any money for or on account of another person, without first obtaining a fidelity fund certificate in accordance with the provisions of section 68 shall not be entitled to any fee, reward or disbursement in respect of anything done by him or her while so practising and shall be guilty of an offence and liable on conviction to a fine not exceeding N\$200 000 or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment.

(4) An exemption contemplated in subsection (2) may be granted by the Council to a legal practitioner subject to such conditions as the Council may determine, including a condition requiring the legal practitioner to furnish the Council with a guarantee of fidelity in favour of the fund, in a form and by a person approved by the Council, guaranteeing the fidelity of such legal practitioner to an amount determined by the Council.

## **68 Application for and issue of fidelity fund certificate**

(1) A legal practitioner practising or intending to practise on his or her own account or in partnership shall, unless he or she is exempted in terms of section 67, apply in the prescribed form to the secretary of the Law Society for a fidelity fund certificate.

(2) An application in terms of subsection (1) shall be accompanied by the contribution, if any, payable in terms of section 69.

(3) Upon receipt of the application in terms of subsection (1), the secretary of the Law Society shall forthwith issue to the applicant a fidelity fund certificate in the prescribed form if he or she is satisfied that the applicant-

- (a) has discharged all his or her liabilities to the Law Society in respect of his

or her contribution; and

(b) has complied with any other lawful requirement of the Law Society.

(4) A fidelity fund certificate shall be valid until 31 December of the year in respect of which it was issued.

(5) A document purporting to be a fidelity' fund certificate which has been issued contrary to the provisions of this Act shall be null and void and shall on demand be returned to the Law Society.

### **69 Contributions to fund by legal practitioners**

(1) Subject to the provisions of this section, every legal practitioner practising on his or her own account or in partnership shall annually when he or she applies for a fidelity fund certificate pay the amount as may be fixed by the board of control from time to time.

(2) Where a legal practitioner commences to practise as such on or after 1 July in any year, he or she shall in respect of that year pay half of the amount of the contribution which is payable for that year in terms of subsection (1).

(3) When the board of control, or the Law Society on behalf of the board of control, gives notice in writing to legal practitioners that the nett value of the fund exceeds N\$3 000 000 all legal practitioners who are liable to pay the annual contribution referred to in subsection (1) shall, as from a date determined by the board of control and specified in the notice, no longer be required to pay that contribution, except if the liability to pay that contribution is recommenced by virtue of a notice given in terms of subsection (4).

(4) Where, at any time after a notice in terms of subsection (3) has been given, the board of control, or the Law Society on behalf of the board of control, gives notice in writing to legal practitioners that the nett value of the fund is less than N\$3 000 000, every legal practitioner referred to in subsection (1) shall, as from a date determined by the board of control and specified in the notice, again be liable to pay the annual contribution referred to in subsection (1), whereupon the notice previously given in terms of subsection (3) shall lapse.

(5) For the purposes of subsections (3) and (4), "nett value of the fund" means all moneys standing to the credit of the fund in terms of section 63, less the sum of all unpaid claims and other liabilities outstanding against the fund

(6) Where the liability in respect of the annual contribution imposed by subsection (1) is suspended by virtue of the provisions of subsection (3), a legal practitioner who applies for the first time for a fidelity fund certificate while such a suspension is in force shall pay a single contribution in the amount as determined by the board of control, and be subject to any subsequent recommencement of that liability notified in terms of subsection (4).

(7) Notwithstanding the provisions of subsection (3), the board of control may require a legal practitioner in respect of whom the fund has been applied as a result of any of the circumstances referred to in section 54 to pay the annual contribution referred to in subsection (1) to the fund for such period as the board of control may determine.

(8) A legal practitioner who is not in possession of a fidelity fund certificate and who intends to commence to practise on his or her own account or in partnership, shall,

before commencing so to practise, give notice of such intention to the secretary, of the Law Society, and he or she shall thereupon become liable to pay to the fund the amount of the contribution referred to in subsection (1) or (6), as the case may be, unless he or she is exempted in terms of section 67 from holding a fidelity fund certificate.

(9) All contributions payable under this section shall be paid to the Law Society, and the Law Society shall remit such contributions to the board of control within 30 days of receipt thereof.

### **70 Payments from fund**

(1) Subject to the provisions of this Act, the fund shall be applied for the following purposes, namely-

- (a) all claims, including costs, payable in terms of this Act, and interest as provided in subsection (2);
- (b) in the discretion of the board of control, a contribution towards expenses incurred by a claimant in establishing his or her claim;
- (c) legal expenses incurred in defending a claim made against the fund or otherwise incurred in relation to the fund;
- (d) premiums payable in respect of contracts of insurance entered into by the board of control under section 66;
- (e) expenses incurred in the administration of the fund and investigations by the board of control or its committees in respect of matters which concern the fund, including allowances to members of the board of control in respect of their services or their reasonable travelling and accommodation expenses incurred in connection with the affairs of the fund;
- (f) in the discretion of the board of control, the bank charges or a portion thereof paid by a legal practitioner in connection with the keeping of a trust account;
- (g) in the discretion of the board of control, the premium or a portion thereof payable in respect of a professional indemnity group insurance policy taken out in favour of legal practitioners;
- (h) in the discretion of the board of control, the costs or a portion thereof incurred by a legal practitioner in connection with the obtaining of a fidelity fund certificate;
- (i) in the discretion of the board of control, the defraying of the whole or a portion of the cost and expenses incurred by the Law Society for the purposes of or in connection with steps taken by it in terms of section 25 or 32;
- (j) loans and interest thereon;
- (k) other moneys which are payable or may be paid from the fund in accordance with this Act.

(2) The board of control may in its discretion pay an amount out of the fund as interest on the amount of any judgement obtained or a claim admitted against the fund, but the rate of interest shall not exceed the prevailing rate of interest prescribed under section 1(2) of the Prescribed Rate of Interest Act, 1975 (Act 55 of

1975).

(3) If the amount of the fund, including the assets thereof, is less than N\$ 100 000 or fifty per cent of the total income of the fund for the previous year (whichever is the greater), the board of control may in its discretion refuse to pay or postpone the payment of any amount for any of the purposes mentioned in paragraphs (a), (b), (f), (g), (h) and (i) of subsection (1).

### **71 Grants from fund for education or research in law and for enhancement of professional standards of legal practitioners**

If the amount of the fund exceeds the sum of N\$ 1 000 000, the board of control may out of the excess in question-

- (a) with the approval of the Council, make grants on such condition as the board of control may determine with such approval-
  - (i) to any person or institution for tertiary education for the purposes of education or research in the science of law or in legal practice;
  - (ii) for the purpose of the furtherance of the administration or dispensation of justice;
  - (iii) to assist in the representation of members of the Law Society in participating in the activities of any international or regional association of legal practitioners where such participation is, in the opinion of the board of control, in the interests of the Law Society or the administration of justice in Namibia, or of education in the science of law or in legal practice,

and may, with such approval, at any time revoke such grant or a part thereof;

- (b) pay an honorarium or compensation to a person for services rendered at the request of the board of control with the object of enhancing the professional standards of legal practitioners;
- (c) contribute towards the costs of the Law Society, including the costs of any law library established or maintained by it.

### **72 Limitation of liability of fund**

(1) The fund shall not be liable to pay, nor pay, an amount in respect of loss suffered-

- (a) by a person as a result of theft committed by a legal practitioner while the legal practitioner is in the employment of a person who is not a legal practitioner, whether such theft was committed in the course of his or her employment or in the course of any private practice carried on by him or her on his or her own account outside such employment, except if he or she, at the time of the theft, held in respect of such practice a fidelity fund certificate or an exemption granted by the Council under section 67 (2);

[Para. (a) substituted by s. 6 of Act 4 of 1997.]

- (b) by the spouse of a legal practitioner as a result of theft committed by that legal practitioner;
- (c) by a legal practitioner as a result of theft committed by a partner or

employee of that legal practitioner or by an employee of a partnership in which the legal practitioner is a partner;

- (d) by a legal practitioner as a result of theft committed by a member or employee of a professional company of which the legal practitioner is a member;
- (e) as a result of theft committed by a legal practitioner whose fidelity has been guaranteed by a person either in general or in respect of the particular transaction, to the extent to which it is covered by the guarantee;
- (f) by a person as a result of theft committed by a legal practitioner after that person has received a notification in writing from the secretary of the Law Society or the board of control warning him or her against the employment or continued employment of such legal practitioner.

(2) A claim for reimbursement as contemplated in section 54 shall be limited-

- (a) in the case of money entrusted to a legal practitioner, to the amount actually handed over, without interest; and
- (b) in the case of securities or other property, to an amount equal to the average market value of the securities or property at the date when written demand is first made for their delivery, or, if there is no average market value, the fair market value as at that date of the securities or property, without interest.

(3) Only the balance of any loss suffered by a person after deduction from the loss of the amount or value of all moneys or other benefits received or receivable by that person in respect of the loss from a source other than the fund, may be recovered from the fund.

### **73 Procedure for instituting claims against fund**

(1) No person shall have a claim against the fund in respect of theft contemplated in section 54 unless-

- (a) written notice of the claim is given to the Council and to the board of control within three months after the claimant becomes aware of the theft or by the exercise of reasonable care should have become aware of the theft; and
- (b) within six months after a written demand has been sent to him or her by the board of control, the claimant furnishes the board of control with such proof as the board of control may reasonably require.

(2) If the board of control is satisfied that, having regard to all the circumstances, a claim or the proof required by the board of control has been lodged or furnished as soon as practicable it may in its discretion extend any of the periods referred to in subsection (1).

### **74 Actions against fund**

(1) No action shall without leave of the board of control be instituted against the fund unless the claimant has exhausted all available legal remedies against the legal practitioner in respect of whom the claim arose or his or her estate and against all



other persons liable in respect of the loss suffered by the claimant.

(2) An action against the fund in respect of a loss suffered by a person as a result of theft committed by a legal practitioner or an employee of a legal practitioner, shall be instituted within one year of the date of a notification directed to such person or his or her legal representative by the board of control informing him or her that the board of control rejects the claim to which the action relates.

(3) In an action against the fund any defence which would have been available to the person against whom the claim arose, shall be available to the fund.

### **75 Subrogation**

On payment out of the fund of money in settlement in whole or in part of a claim under this Act the fund shall be subrogated to the extent of such payment to all the rights and legal remedies of the claimant against a legal practitioner or a person in relation to whom the claim arose, or in the event of his or her death or insolvency or other legal disability, against a person having authority to administer his or her estate.

### **76 Exemption of fund from certain provisions of certain laws**

(1) The revenue of the fund shall be exempt from the provisions of any law relating to payment of income tax.

(2) The provisions of any law relating to insurance (other than a law relating to the compulsory insurance of employees) or the provision of security in connection therewith, shall not apply to the fund.

### **77 Indemnification in respect of certain acts**

No action for damages shall be instituted-

- (a) against the fund, the board of control or a member or employee of the board of control in respect of anything done in the *bona fide* exercise or performance of its or his or her powers or duties in terms of this Act; or
- (b) against the Law Society, the Council, a member of the Council or official or employee thereof, in respect of a notification issued in good faith for the purposes of section 72 (1) (f).

### **78 Preservation and disposal of records and documents in possession of board of control**

(1) A record or document in possession of the board of control relating to a claim instituted against the fund shall, subject to the provisions of subsection (2), be preserved at the office of the secretary of the board of control.

(2) The chairperson of the board of control may, after the lapse of five years from the date on which a claim to which a record or document relates is settled by the board of control or adjudicated upon by a court or rendered unenforceable by lapse of time, direct that such record or document be removed to some other place of custody or be destroyed or otherwise disposed of.

## **PART VII**

## GENERAL

### 79 Senior Counsel

- (1) A legal practitioner wishing the rank of dignity of Senior Counsel of Namibia to be conferred upon him or her shall submit his or her application in that behalf to the Minister.
- (2) Upon receipt of an application made in terms of subsection (1), the Minister shall make copies of the application available to the Chief Justice and the Judge-President for the purpose of obtaining their recommendations in relation to the application.
- (3) The Minister shall submit the application and the recommendations referred to in subsection (2) to the President who may in his or her discretion either reject the application or appoint by letters patent, under the Seal of the Republic of Namibia, the applicant as a Senior Counsel of Namibia.
- (4) A legal practitioner appointed as a Senior Counsel of Namibia shall be entitled to use the letters "S.C." after his or her name.
- (5) Notwithstanding any rule of practice which may have been enforced in Namibia before the commencement of this Act, a Senior Counsel shall not be required to appear in any court of law only if a junior legal practitioner is also employed.

### 80 Rules of Court

In addition to the matters mentioned in section 39 of the High Court Act, 1990 (Act 16 of 1990), the Judge-President may, subject to the provisions of that section, and after consultation with the chairperson of the Council, make rules in relation to the procedure to be followed and the information to be supplied to the Court by any applicant for admission under this Act.

### 81 Regulations

- (1) The Minister, after consultation with the Board, may make regulations prescribing anything which in terms of Part I is to be prescribed or which the Minister considers it necessary or expedient to prescribe for the purposes of any provision of this Act.
- (2) The Minister may, after consultation with the Chief Justice, make regulations-
  - (a) determining the rights, duties and powers of a *curator bonis* appointed under section 28 (2);
  - (b) specifying the conditions subject to which lawyers resident in a country declared as a reciprocating country under section 85 (1) may be registered and the conditions subject to which such lawyers, once registered, may practise in Namibia;
  - (c) determining the certificate which shall be endorsed on any document specified in the regulations by any person preparing such document for or on behalf of another person;
  - (d) determining the acts which shall not be performed by any person other than a legal practitioner.
- (3) For the purposes of the provisions of this Act relating to the fund, the Minister

may, after consultation with the Chief Justice and the Council, make regulations relating to

- (a) the method of payment and recovery of contributions to the fund;
- (b) the form in which and the periods within which notice is to be given to the Council and the board of control in respect of claims against the fund and the particulars thereof, and the conditions subject to which and the extent to which the board of control may settle claims without recourse to judicial proceedings;
- (c) the form of certificates to be issued to legal practitioners and of declarations, applications, notices and documents to be used in relation to an application or refusal of an application relating to the fund;
- (d) the obtaining of evidence for the purposes of the fund that a person has been admitted to practise or is still practising or has ceased to practise, or as to the reason why a person has discontinued practising, and generally for the obtaining of information which is considered necessary or desirable for the purposes of determining the merits of applications for fidelity fund certificates or matters related thereto;
- (e) the election of the chairperson and other office-bearers of the board of control;
- (f) the opening of offices for and the regulation of the management and administration of the board of control, including the manner and form in which all agreements, deeds and documents shall be drawn up and executed by or on behalf of the board of control;
- (g) the authorization of the board of control or a committee thereof to subpoena and examine on oath or affirmation a person whose evidence it is considered necessary to obtain in order to enable the board of control or a committee thereof to decide on the validity of a claim submitted against the fund;
- (h) the time when and the manner in which interest referred to in section 26 (4) shall be paid over to the fund;
- (i) generally, such other matters as may be considered necessary or expedient by the Minister for the purpose of achieving the objects of the provisions of this Act relating to the fund.

(4) In the case of regulations made under subsection (2), any regulation-

- (a) made under paragraph (c) thereof, may provide for a penalty by way of a fine not exceeding N\$1 000 or imprisonment for a period not exceeding three months for any contravention thereof or any failure to comply therewith;
- (b) made under paragraph (d) thereof, may provide for exemptions, either temporarily or permanently or partially or wholly, from the prohibitions contained therein in respect of particular persons or categories of persons or in respect of a specific matter connected with any act mentioned in such regulations, but an exemption granted permanently shall not be cancelled or withdrawn unless such cancellation or withdrawal has been approved by resolution of the National Assembly.

## **82 Evidence**

A certificate purporting to be signed by the Registrar and certifying that-

- (a) the name of a person appears on the Roll, shall on its mere production be *prima facie* evidence that such person is enrolled as a legal practitioner;
- (b) the name of a person has been removed from or does not appear on the Roll, shall on its mere production be *prima facie* evidence that such person is not enrolled as a legal practitioner;
- (c) that a legal practitioner has been suspended from practice for a period specified in that certificate, shall on its mere production be *prima facie* evidence that such legal practitioner has been suspended from practice for that specified period.

## **83 Oath or affirmation upon admission and enrolment**

A person who is admitted and authorised to practise as a legal practitioner shall, upon being so admitted and authorised, take an oath or make a solemn affirmation before the Judge-President or a Judge designated by the Judge-President for that purpose, in the terms set forth in Schedule 1.

## **84 Legal practitioners are officers of the Court**

A person admitted to practise as a legal practitioner shall be an officer of the Court.

## **85 Reciprocal arrangements and certificates of authorization to act in Namibia**

(1) Where the Minister is satisfied that the law of a foreign country permits the admission or authorization otherwise of legal practitioners resident in Namibia to practise law in that country, whether generally or in particular cases, the Minister may, after consultation with the Chief Justice and by notice in the *Gazette*, declare such country to be a reciprocating country for the purposes of this Act.

(2) Where the Chief Justice or, in his or her absence, the Judge-President is satisfied that, having regard to the complexity or special circumstances of a matter, it is fair and reasonable for a person to obtain the services of a lawyer who has special expertise relating to the matter and that the lawyer is not resident in Namibia or a reciprocating country, he or she may, upon application made to him or her in that behalf, grant to such lawyer a certificate authorising him or her to act in Namibia in relation to that matter.

(3) A certificate granted under subsection (2) shall be subject to the condition that the lawyer concerned shall not engage in the practising of law in Namibia except in relation to the matter for which the certificate was granted.

(4) A copy of every certificate granted under subsection (2) shall be delivered to the Council.

(5) A lawyer from a reciprocating country permitted to practise in Namibia in accordance with regulations made under section 81(2) (b) and a lawyer acting under a certificate granted under subsection (2), shall not be entitled to accept, receive or hold trust money.

## **86 Notaries public**

(1) A legal practitioner shall not perform any act which in terms of any law may be performed only by a notary public, unless he or she has been appointed as a notary public under subsection (2), or is deemed to have been so appointed in terms of subsection (3).

(2) The Chief Justice may on application made by a legal practitioner appoint such legal practitioner as a notary public if the Chief Justice is satisfied-

(a) that the applicant has been engaged in the practice of the profession in Namibia for a period of not less than 5 years; and

(b) that no proceedings are pending to strike the applicant's name from the Roll or to suspend him or her from practice.

(3) A person who was entitled to practise as a notary public in terms of the Attorneys Act, 1979 (Act 53 of 1979), immediately before the commencement of this Act, shall be deemed to have been appointed as such under subsection (2).

(4) Notwithstanding subsection (2), the Chief Justice may, if he or she deems it fit in a particular case, appoint a legal practitioner as a notary public although such a legal practitioner has been engaged in the practice of the profession for less than five years.

## **87 Practice of conveyancing**

(1) A legal practitioner shall not present any document for registration in a deeds registry or for attestation or execution by the registrar of deeds in terms of any law, unless he or she holds a certificate as having passed an examination in conveyancing set and held by the Board under section 11 (1) (d) or is, in terms of subsection (2) of this section, deemed to be the holder of such certificate, but a legal practitioner appointed or deemed to have been appointed as a notary public in terms of section 86 shall not be precluded from so presenting for registration or attestation or execution any notarial deed.

[Sub-s. (1) substituted by s. 7 of Act 4 of 1997.]

(2) A person who was entitled to practise as a conveyancer in terms of the Attorneys Act, 1979 (Act 53 of 1979), immediately before the commencement of this Act, shall be deemed to be the holder of a certificate referred to in subsection (1).

## **88 Transfer of assets rights liabilities and obligations to Law Society**

(1) Upon the commencement of this Act, all assets, rights, liabilities and obligations of the society which existed under the Attorneys Act, 1979 (Act 53 of 1979) (hereinafter referred to as the existing society) shall vest in the Law Society of Namibia established by this Act.

(2) Every agreement, deed, bond, certificate or other instrument to which the existing society was a party or which affected that society, and whether or not of such a nature that the rights, liabilities and obligations thereunder could be assigned prior to the commencement of this Act, shall with effect from the commencement of this Act, have effect and be enforceable as if the Law Society were a party thereto or affected thereby instead of the existing society, and every reference therein to the existing society shall be construed as a reference to the Law Society established by this Act.

(3) Any proceedings pending immediately before the commencement of this Act to which the existing society was a party shall be continued as if the Law Society established by this Act was a party thereto in lieu of the existing society.

(4) In respect of the transfer, hypothecation or lease of property or of an agreement or certificate or other instrument which is the subject of registration by virtue of a law, the competent officer of the appropriate registration authority shall, upon the request of the Law Society, without payment of transfer duty, stamp duty or any other fee or charge, make such entry or endorsement or issue such new certificate or take such other action as may be required to give effect to the provisions of this section.

### **89 Transitional provisions in relation to Council of the Law Society**

(1) For the purposes of the functioning of the Council during the period between the commencement of this Act and the close of the first annual general meeting of the Law Society held in accordance with the provisions of section 44 (1), and notwithstanding the provisions of section 45 and the repeal of the laws referred to in section 94, the Council shall consist of-

- (a) six persons who shall be appointed by the council which immediately before the date of commencement of this Act existed under the Attorneys Act, 1979 (Act 53 of 1979), from among those persons who were members of that council immediately before that date; and
- (b) three persons who shall be appointed by the society which immediately before the commencement of this Act existed under the name of the Society of Advocates of Namibia, from among persons who were immediately before that date practising as advocates.

(2) The Council constituted in accordance with the provisions of subsection (1) shall elect from its members a chairperson and a vice-chairperson.

(3) For the purposes of the Council constituted in accordance with subsection (1)-

- (a) five members shall constitute a quorum at any meeting thereof;
- (b) any casual vacancy occurring in the membership thereof shall be filled by the co-option by that Council of a legal practitioner for the unexpired portion of the period referred to in subsection (1).

(4) Until the first election of the members of the Council in accordance with the provisions of section 45(1), the Council constituted in terms of subsection (1) shall be competent to exercise the powers and perform the duties and functions conferred upon or assigned to the Council by this Act.

### **90 Transitional provisions in relation to Legal Practitioners' Fidelity Fund Board of Control**

The Legal Practitioners' Fidelity Fund Board of Control which existed, and the committees appointed by that board, in terms of the Legal Practitioners' Fidelity Fund Act, 1990 (Act 22 of 1990), immediately before the commencement of this Act, shall continue to exist and the members thereof shall continue to hold office, as if that board was established and the members of that board and those committees were appointed in terms of Part VI of this Act, until the next board of control is constituted under this Act.

## **91 Transitional provisions in relation to practical legal training and obtaining of fidelity fund certificate or exemption by existing advocates**

(1) Notwithstanding anything to the contrary in this Act contained, the course provided at the Centre before the commencement of this Act for the purpose of training persons to qualify as legal practitioners shall be deemed to have been provided pursuant to the provisions of section 16 (1) and any period of practical training undergone with an attorney or advocate before the commencement of this Act shall be deemed, for the purposes of section 5 (2), to have been a period of practical legal training under attachment to a legal practitioner.

(2) A legal practitioner who, immediately before the commencement of this Act, was practising as an advocate shall be entitled to continue his or her practice, notwithstanding that he or she does not hold a fidelity fund certificate or is not exempted from holding such certificate under this Act: Provided that such a legal practitioner-

- (a) shall cease to be entitled to so continue his or her practice upon the expiration of the period of three months after the date of commencement of this Act, or such longer period as the Minister, by notice in the *Gazette*, may determine, and shall before the expiration of such period, obtain either a fidelity fund certificate or an exemption from the holding of such a certificate in accordance with the provisions of this Act;
- (b) shall not, during the period referred to in paragraph (a), be entitled to accept or receive or hold moneys for or on account of another person, unless he or she has obtained a fidelity fund certificate, and during that period the provisions of subsection (3) of section 67 shall apply to such a legal practitioner as if he or she had been exempted under subsection (2) of that section.

## **92 Interpretation of certain references in laws**

Subject to the provisions of this Act, a reference in any other law to an advocate, a counsel or an attorney, shall be construed as a reference to a legal practitioner.

(2) A reference in any other law to-

- (a) a conveyancer admitted under the Attorneys Act, 1979 (Act 53 of 1979), shall be construed as a reference to a legal practitioner holding, or deemed to be holding, the certificate in conveyancing referred to in section 87;
- (b) a notary public, shall be construed as a reference to a notary public appointed or deemed to be appointed under section 86.

## **93 Amendment of the High Court Act**

Section 3 of the High Court Act, 1990 (Act 16 of 1990), is amended by the substitution for paragraph (c) of the following paragraph:

- "(c) such a person has practised as a legal practitioner in Namibia, whether before or after the commencement of the Legal Practitioners Act, 1995, or in a country referred to in paragraph (a) or (b), for a period of not less than five years."

#### **94 Repeal of laws and savings**

(1) Subject to subsections (2), (3) and (4), the laws referred to in column 2 of Schedule 2 are, subject to the provisions of this section, repealed to the extent referred to column 3 of that Schedule.

(2) Notwithstanding the repeal of the Attorneys Act, 1979 (Act 53 of 1979), sections 2, 3, 6, 7, 8, 9, 10, 11, 14 and paragraphs (bA), (c) and (d) of section 80 of that Act, and any regulations or rules made or fees prescribed for the purposes of or in connection with those provisions shall, until expiration of the period referred to in section 5 (1) (b) (i) of this Act, remain in force and effect in relation to a person who immediately before the commencement of this Act was a candidate attorney as defined in that Act, and for the purposes of this subsection, a reference in any of those provisions to-

- (a) the council and to the society shall be construed as a reference to the Council and to the Law Society established under this Act;
- (b) an attorney shall be deemed to be a reference to a legal practitioner.

(3) Notwithstanding the repeal of the Admission of Advocates Act, 1964 (Act 74 of 1964), section 3A of that Act, and any notice issued thereunder shall, until expiration of the period referred to in section 6 (2), remain in force and effect in relation to a person who immediately before the commencement of this Act was undergoing pupillage as contemplated in that Act.

(4) Anything made or prescribed, including regulations or rules, or done under the provisions of any law repealed by subsection (1), and having the force of law immediately before the commencement of this Act shall, insofar as they are not inconsistent with any of the provisions of this Act, continue to be in force, until altered or revoked by the competent authority under the provisions of this Act.

#### **95 Short title and commencement**

This Act shall be called the Legal Practitioners Act, 1995, and shall come into operation on a date to be determined by the Minister by notice in the *Gazette*.



**Schedule 1**

**(Section 83)**

OATH/AFFIRMATION

"I,.....,  
do swear / solemnly affirm that I will truly and honestly demean myself in the practice  
of a legal practitioner according to the best of my knowledge and ability and will  
defend and uphold the Constitution of the Republic of Namibia as the Supreme Law.

So help me God"

(in the case of an oath)

.....

SIGNATURE

.....

JUDGE-PRESIDENT / JUDGE

**Schedule 2**  
**LAWS REPEALED**  
**(Section 94)**

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
No. and year of law	Title	Extent of repeal
Proclamation 21 of 1919	Administration of Justice Proclamation, 1919	Section 11, in so far as the provisions thereof are still in force
Act 74 of 1964	Admission of Advocates Act, 1964	The whole
Act 73 of 1965	Admission of Advocates Amendment Act, 1965	The whole
Ordinance 28 of 1967	Legal Practitioners' Fidelity Fund Ordinance, 1967	The whole
Act 29 of 1974	General Law Amendment Act, 1974	The whole
Act 39 of 1977	Admission of Advocates Amendment Act, 1977	The whole
Act 25 of 1979	Admission of Advocates Amendment Act, 1979	The whole
Act 53 of 1979	Attorneys Act, 1979	The whole
Act 76 of 1980	Attorneys Amendment Act, 1980	The whole
Act 116 of 1981	Attorneys Amendment Act, 1981	The whole
Act 60 of 1982	Attorneys Amendment Act, 1982	The whole
Act 56 of 1983	Attorneys Amendment Act, 1983	The whole
Act 103 of 1983	Second Attorneys Amendment Act, 1983	The whole
Act 60 of 1984	Admission of Advocates Amendment Act, 1984	The whole

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
No. and year of law	Title	Extent of repeal

Act 108 of 1984	Admission of Advocates Amendment Act, 1985	The whole
Act 80 of 1985	Attorney Amendment Act, 1985	The whole
Act 20 of 1986	Attorney Amendment Act, 1986	The whole
Act 17 of 1987	Admission of Advocates Amendment Act, 1987	The whole
Act 87 of 1989	Attorneys Amendment Act, 1989	The whole
Act 13 of 1990	Attorney Amendment Act, 1990	The whole
Act 22 of 1990	Legal Practitioner's Fidelity Fund Act, 1990	The whole
Act 17 of 1991	Attorney Amendment Act, 1991	The whole
Act 19 of 1991	Admission of Advocates Act, 1991	The whole
Act 16 of 1993	Admission of Advocates Amendment Act	The whole
Act 17 of 1993	Attorney Amendment Act, 1993	The whole

**Schedule 3**  
**(Section 5 (1) (d))**

Antigua and Barbuda  
Australia  
Commonwealth of the Bahamas  
People's Republic of Bangladesh  
Barbados  
Belize  
Brunei Darussalam  
Canada  
Democratic Socialist Sri Lanka  
Dominica  
Federal Republic of Nigeria  
Fiji  
Ghana  
Grenada  
Guyana  
Independent Republic of Vanautu  
Jamaica  
Kingdom of Lesotho  
Kingdom of Swaziland  
Kingdom of Tonga  
Malawi  
Malaysia  
Mauritius  
New Zealand  
Papua New Guinea  
Republic of Botswana  
Republic of Cyprus  
Republic of the Gambia  
Republic of India  
Republic of Ireland  
Republic of Kenya  
Republic of Kiribati  
Republic of Maldives

Republic of Malta  
Republic of Nauru  
Republic of Singapore  
Republic of South Africa  
Republic of Uganda  
Republic of Zambia  
Republic of Zimbabwe  
St. Christopher-Nevis  
St. Lucia  
St. Vincent and the Grenadines  
Seychelles  
Sierra Leone  
Salomon Islands  
Trinidad and Tobago  
Tuvalu  
United Kingdom of Great Britain and Northern Ireland  
United Republic of Tanzania  
United States of America  
Western Samoa

**Schedule 4**

**(Section 2 (3))**

**LEGAL PRACTITIONER**

**CERTIFICATE OF ENROLMENT**

THIS IS TO CERTIFY that .....  
was, on the.....day of....., enrolled as a legal  
practitioner in terms of the Legal Practitioners Act, 1995, and is accordingly entitled  
to all the rights and privileges and charged with all the responsibilities attaching to  
the practice of the profession of a legal practitioner.

.....Registrar of the High Court of  
Namibia

Date.....

*[Seal of the High Court of Namibia]*